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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,027	07/25/2001	Adrianus J. van den Nieuwelaar	V0028/260870	9327

23370 7590 01/21/2005

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EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,027

Applicant(s)

NIEUWELAAR ET AL.

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58,60-72 and 75-79 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 58,60-72 and 75-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 10-14-04 and this action is non-final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 67-69 and 70-72 and 75 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 67 recites the limitations "the belly fat" and "the viscera" in line 2 and lines 6-7.

There is insufficient antecedent basis for these limitations in the claim.

Claim 68 recites the limitations "the belly fat" and "the viscera" in line 2 and line 8.

There is insufficient antecedent basis for these limitations in the claim.

Claims 70-72 and 75 recite the limitation "the vent" in line 2 of each claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 69 depends from rejected claim 68 and includes all of the limitations of claim 68 thereby rendering this dependent claim indefinite.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 58, 60-65, 70-71 and 76-79 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,816,904 to Tieleman et al.

Referring to claims 58 and 62, Tieleman et al. discloses a method for processing a slaughtered bird carcass suspended by its legs – see figures 10-14, wherein the carcass comprises a spine, a stomach, skin comprising belly skin and belly fat – see for example figures 10-14, wherein the sine defines a longitudinal axis – see for example figures 10-14, the method comprising, introducing a separating means – at 106,128, into the carcass of the bird through a hole in the skin – see for example figures 10-14, breaking at least one tissue connection in the belly fat by moving the separating means relative to the carcass between the stomach and the belly skin in a plane which extends substantially perpendicular to the longitudinal axis – see for example figures 10-14 and the description of the operation of the device in columns 6-9, removing the separating means from the carcass – see for example figure 14, and wherein the separating means is not adapted to remove viscera from the carcass – see for example figures 10-

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14. Tieleman et al. does not disclose inserting an eviscerating means into the carcass after removing the separating means, however it is inherent that after cutting open around the vent of the carcass that an eviscerating device is inserted into the carcass to remove the internal organs before further processing of the carcass.

Regarding claim 60, Tieleman et al. discloses the separating means is rotated within the carcass – about item 90 – see figures 10-14.

Referring to claim 61, Tieleman et al. discloses the separating means is moved in a scraping manner between the stomach of the bird and belly fat situated on the inside of the belly skin – see at 106,128 in figures 10-14.

Referring to claim 63, Tieleman et al. discloses first moving means – at 48,72,90,98, for moving the separating means in the carcass through a hole in the skin – see for example figures 10-14.

Referring to claim 64, Tieleman et al. discloses the first moving means moves the separating means in a rotating manner – about item 90 as seen in figures 10-14.

Referring to claim 65, Tieleman et al. discloses the separating means are in the form of scraping means – at 106.

Referring to claims 70-71, Tieleman et al. discloses the hole in the skin is an opening obtained by cutting out the vent – see at 12 in figures 16-17.

Referring to claims 76-77, Tieleman et al. discloses the separating means is positioned at a selected position relative to the breastbone of the bird – see for example figures 10-14 and the description of the operation of the device in columns 6-9.

Referring to claims 78-79, Tieleman et al. discloses the separating means is positioned to move in a plane at a predetermined location in the belly fat – see for example figures 10-14 and the description of the operation of the device in columns 6-9.

Claims 67-68, 72 and 75 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,059,868 to Meyn.

Referring to claims 67-68, Meyn discloses a device/method for breaking at least one tissue connection in the belly fat of a slaughtered bird prior to evisceration of the bird comprising, a substantially elongated element – at 24,25,30,31,32, having a free end – see figure 2, for insertion under the skin of the belly of the bird – see figure 1, a protection element – at 22,23, for insertion into the bird through a hole in the skin to protect the viscera as the free end of the elongated element is moved within the carcass of the bird – see for example figures 1-2 and column 3 lines 27-68 and column 4 lines 1-25, wherein the protection element comprises a stop face – the outer surface of 22-23, adapted for pushing the viscera away from the hole – see for example figures 1-2 and column 3 lines 27-68 and column 4 lines 1-25, and moving means 1-10, for positioning the free end of the elongated element in the hole near the stop face and for rotating the elongated element about a substantially vertical axis – proximate 2, for inserting the free end of the elongated element under the skin and for moving the free end of the elongated element away from the stop face to thereby break the at least one tissue connection in the belly fat – see for example figures 1-2 and column 3 lines 27-68 and column 4 lines 1-25, and moving means 1-10.

Referring to claims 72 and 75, Meyn discloses the hole in the skin is an opening obtained by cutting out the vent – see for example figure 1 and columns 3-4.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 58, 60-61, 70, 76 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,418,445 to Meyn et al. in view of EP Patent No. 0432317.

Referring to claim 58, Meyn et al. discloses a method for processing a slaughtered bird carcass suspended by its legs – see figure 1, wherein the carcass comprises a spine, a stomach, skin comprising belly skin and belly fat – see for example figures 1, wherein the spine defines a longitudinal axis – see figures 1, the method comprising, introducing a separating means – at 24-25, into the carcass of the bird through a hole in the skin – see for example figure 1, breaking at least one tissue connection in the belly fat by moving the separating means relative to the carcass between the stomach and the belly skin in a plane which extends substantially perpendicular to the longitudinal axis – see for example figure 1, column 3 lines 44-68 and column 4 lines 1-18, removing the separating means from the carcass – see for example figure 1 and column 3 lines 44-68 and column 4 lines 1-18. Meyn et al. does not disclose inserting an eviscerating means into the carcass after removing the separating means. The European patent does disclose inserting an eviscerating means – at 41-44, into the carcass after removing the separating means – the device forming the vent hole through which the eviscerating means enters the carcass – see for example

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figures 1-2 and 5. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Meyn et al. and add the step of inserting the eviscerating means into the carcass of the European patent, so as to allow for the carcass to be prepared for further processing.

Referring to claim 60, Meyn et al. as modified by the European patent further discloses the separating means – at 24-25, of Meyn et al., is rotated within the carcass – about item 23 as seen in figure 1 of Meyn et al.

Referring to claim 61, Meyn et al. as modified by the European patent further discloses the separating means – at 25, is moved in a scraping manner between the stomach of the bird and belly fat situated on the inside of the belly skin – see for example figure 1 and column 3 lines 44-68 and column 4 lines 1-18.

Referring to claim 70, Meyn et al. as modified by the European patent further discloses the hole in the skin is an opening obtained by cutting out the vent – see for example figure 1 and columns 3-4 of Meyn et al.

Referring to claim 76, Meyn et al. as modified by the European patent further discloses the separating means – of Meyn et al., is positioned at a selected position relative to the breastbone of the bird – see for example figure 1, column 3 lines 44-68 and column 4 lines 1-18 of Meyn et al.

Referring to claim 78, Meyn et al. as modified by the European patent further discloses the separating means is positioned to move in the plane at a predetermined location in the belly fat – see for example figure 1, column 3 lines 44-68 and column 4 lines 1-18 of Meyn et al.

Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tieleman et al. as applied to claim 63 above, and further in view of U.S. Patent No. 4,059,868 to Meyn. Tieleman

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et al. discloses all of the features of the invention as described above except a second moving means for placing a protection element in the carcass prior to or during moving the separating means in the carcass. Meyn '868 does disclose a second moving means – 20 for placing a protection element – 23 in the carcass prior to or during moving the separating means in the carcass – see for example figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Tieleman et al. and add the second moving means of Meyn '868, so as to further stabilize the carcass.

Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meyn '868 as applied to claim 68 above, and further in view of U.S. Patent No. 5,186,679 to Meyn. Meyn '868 does not disclose the protection element is plate shaped. Meyn '679 discloses the protection element – at 30 is plate shaped – see figures 1b-3b. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Meyn '868 and add the protection element being plate shaped of Meyn '679, so as to allow for the carcass to be in position for removal of the viscera.

Response to Arguments

5. Applicant's arguments with respect to claims 58, 60-72 and 75-79 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David Parsley
Patent Examiner
Art Unit 3643


PETER M. POON
SUPERVISORY PATENT EXAMINER

1/12/05